NO

IN THE

Supreme Court of the United States

RUSSELL E. LERMAN, on behalf of himself and all others similarly situated

Petitioner,

v.

DIANE LEGREIDE, Director, State of New Jersey, Division. of Motor Vehicles

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On Petition for Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Supremacy Clause of the U.S. Constitution takes precedence over a discrete part of a New Jersey penal statute, that is unconstitutionally vague on its face being devoid of a relative invariable standard of guilt or a rule of action, because of which it is being arbitrarily and discriminatorily misused by an administrative agency against motor vehicle owners to indefinitely suspend their driving licenses, which results in the deprivation and the arbitrarily undermining of a property and liberty interest that is protected by the Due Process Clause in the Fourteenth Amendment.

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY

Petitioner Russell E. Lerman respectively prays that a Writ of Certiorari issue to review the judgment of the Appellate Division of the Superior Court of New Jersey entered in this matter on January 19, 2005 with a subsequent Motion for Reconsideration being summarily denied on February 17, 2005. A Petition for Certification and an Appeal was taken to the Supreme Court of New Jersey which was summarily denied on May 13, 2005. A subsequent motion for reconsideration was summarily denied and entered on June 22, 2005

OPINIONS BELOW

The Appellate Division's unreported opinion is annexed on APP.36- 39.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

ORDERS

The Appellate Division of the New Jersey Superior Court affirmed the dismissal of the Petitioner's class action complaint for declaratory relief in the Law Division of the Superior Court of New Jersey on January 19, 2005. A subsequent Motion for Reconsideration to the Supreme Court of New Jersey of its summary denial of a Petition for Certification was entered on June 22, 2005..

STATUTES AND AMENDMENTS INVOLVED

Amendment XIV-Rights guaranteed, privileges and immunities of citizenship, due process and equal protection:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. *Background*

The Petitioner was operating his car in Randolph Township, New Jersey when he was stopped by a patrol officer who issued a traffic ticket for a purported violation of N.J.S.A. 39:4-144.(APP.18,¶1;19,¶ 3). The ticket was facially fatally defective and therefore the Petitioner did not litigate it in the Randolph Municipal Court nor was he ever convicted of the said offense. (APP. 18,¶1;APP.19,¶3)

The nonappearance executed a convenient computer generated boiler plate scheduled driving license suspension notice. (APP. 19,¶3, APP.27-8) This format clearly indicated that it was a very commonplace event in New Jersey. The notice was arbitrarily concocted by the Respondent's administrative agency, the Division of Motor Vehicles (DMV) now known as the Motor Vehicle Commission. (MVC).

The said notice was fatally flawed because it contained a primary standard of guilt, i.e. "failed to answer summons(es) in the following court", that was not articulated in the Motor Vehicle Act. [APP.29-30; App.32-5) This act was originally enacted by the state legislature in 1921. (APP.29) The said notice wrongly claimed it derived the authority to execute it from a section of the act, i.e. N.J.S.A. 39:5-30. (App.19,¶6; APP.28) All of which violated the "fair warning"

requirement in the due process clause of the Fourteenth Amendment which protects a motor vehicle owner's driving license as it is a liberty and property interest. [APP.20,¶7; APP.24,¶13(a)] The Petitioner did not obey the DMV order, that was contained in the notice, to voluntarily appear in municipal court within 59 days. (APP.27-8) Therefore the Petitioner's driver's license was typically summarily indefinitely suspended on or about March 29, 1996. [APP.18,¶ 1]

2. *Superior Court Proceedings*

The Petitioner invoked the original jurisdiction of the Law Division of the New Jersey Superior Court on December 23, 2002 under the Declaratory Judgment Act, § N.J.S.A. 2A:16-52 [APP.18] The multi faceted Complaint was predicated on the patent constitutional defects in section N.J.S.A. 39:5-30(a) of the Motor Vehicle Act. The relief sought was to declare null and void and to restrain the Respondent from using the defective part of this section as a pretext to suspend a vehicle owner's driving license for the said nonappearance. Further relief sought was to reinstate the Petitioner's driving license to the status quo as of March 29, 1996. [App.25,¶¶ 1,2].

The trial court failed to find essential facts that should have been found. This failure was caused by the Respondent's strategy to dismiss the Complaint for lack of jurisdiction, thereby denying the Petitioner his day in court under the Declaratory Judgment Act. The initial Respondent's dismissal motion was granted on December 4, 2003 as it was purportedly unopposed. The Petitioner appealed this decision to the Appellate Division on January 20, 2003. After a request by the Petitioner, a court administrative official conducted an investigation which determined that the Petitioner's opposition brief was mysteriously deleted from the trial court's case file even though the official docket entries showed it had been timely received by the trial court. The dismissal order was vacated at the behest of the

court administrator. Consequently a copy of the opposition brief was supplied to the trial court by the Petitioner. On February 9, 2004 the trial court unequivocally enjoined the Respondent's null and void action of suspending driving licenses for the failure to answer a traffic complaint in a municipal court.

Mysteriously the trial court's order failed to reinstate the Petitioner's driving license to the status quo as of March 29, 1996. This contradictory order forced the Petitioner to amend the appeal pending in the Appellate Division on March 12, 2004. Appellate Division proceedings were further substantially delayed pursuant to two consecutive requests by the Respondent to submit a tardy answering brief.

On June 7, 2004, despite the fact the case was pending in the Appellate Division, the trial court inexplicably reversed the said injunction order and dismissed the Declaratory Judgment Complaint which directly contradicted N.J.S.A. 2A:16-51 "to **settle** and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations" and N.J.S.A. 2A:16-53, "A person...whose **rights**, status or other relations are effected by a **statute** ...may have determined any **question of construction** or validity arising under the ...statute and obtain a declaration of rights, status or other legal relations thereunder." The Petitioner was thereby denied the protection of his Constitutional rights.

The Respondent never assented nor denied the constitutionality of the patent defect in N.J.S.A. 39:5-30. **The dismissal order did not render constitutional the patent defect in N.J.S.A. 39:5-30.** It is in the public interest to determine the constitutionality of section N.J.S.A. 39:5-30.

The Appellate Division affirmed the decision of the Law Division on January 19, 2005, by citing the case of *Silverman v. Berkson*, 661 A.2d 1266, 141 N.J. 412 (1995) in its opinion. (APP.36-39) This case

construed N.J.S.A. 49:3-68 (APP.35-6) "the subpoena statute " which deals with an **investigative procedure.** The statute that the Petitioner wanted to be construed was the Motor Vehicle Act, and in particular section N.J.S.A. 39:5-30(a) which entails **accusatory procedures.** This opinion was not persuasive as the investigative statute N.J.S.A. 49:3-68 was **not in pari materia** with the said accusatory section. An investigative procedure does not contain an accusation or standard of guilt nor rule of action. The person subpoenaed does not have to be "forewarned" by a statute regarding his conduct. The only issue decided in *Berkson* was the constitutionality of issuing an investigative subpoena to a resident of New York. The New Jersey Superior Court had the statutory authority to subpoena witnesses for the investigative bureau. (App.35,¶21(c)] The same statute shows [App.36,¶21(d)] that Berkson's liberty or property interests were not at stake in those investigative hearings. This Court in *Hannah v. Larch*, 363 U.S. 420, 441, 442 (1960) said that an investigative committee :

> "..does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights"... "Since the Commission does not adjudicate, it need not be bound by adjudicatory procedures".

The court in *Berkson* simply ruled that he was amenable to the In Personam jurisdiction of the Superior Court's process as the New Jersey long arm rule could be extended under the Constitutional principles found in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

Therefore the procedures used by the Respondent under the "void for vagueness" method in section N.J.S.A. 39:5-30 of the Motor Vehicle Act, that

violates the "fair warning" requirement in the due process clause, is not parallel with the method used under the "subpoena statute".

This Court's teachings explicitly exposes the unconstitutionality of the vague term "reasonable " used in accusatory proceedings. Conversely, this Court's teachings supports the Constitutional principle of "minimum contacts" to obtain In Personam jurisdiction for an investigative proceeding. Therefore the "subpoena" and "license suspension" statutes are distinguishable and their interpretation is not "in pari materia."

Consequently the Appellate Division's tricky opinion of January 19, 2005, with its several misleading statements of facts and the use of the *Berkson* decision, *is* erroneous.

The use of case law involving an **investigative** procedure would not provide any reason to extend its holding to the Respondent's authority to suspend driving licenses. Therefore it is not applicable to the instant matter and has no probative effect on the Constitutionality of N.J.S.A. 39:5-30 (a).

REASONS FOR GRANTING THE WRIT

In 1921 New Jersey enacted its Motor Vehicle Act (APP.29). A section of this act, i.e. R.S. 135-55, [APP.29] now found in N.J.S.A. 39:5-30(a) [APP.32-4], adopted a twofold method by which a person's driving license may be suspended. If either part is violated the license may be suspended. Thus the parts are not interlinked and are severable.

Neither did the boiler plate scheduled suspension notice prepared on January 30, 1996 for the Petitioner by the Respondent's agency [APP.27-8] nor the Opinion below [APP.38,¶3] **specify** which part purportedly provided Respondent with the Constitutional authority to suspend the Petitioner's

driving license. Therefore the said two parts will be analyzed separately for their Constitutionality.

A. Reasonable Grounds.

Motor Vehicle Act section, N.J.S.A. section 39:5-30 (a), phrase that says, "on any other reasonable grounds". [APP.33] is **not** a standard of guilt or rule of action. The New Jersey legislature's enactment in 1921 failed to establish a standard or rule of action. This phrase is "void for vagueness" as it does not explicitly inform thousands of New Jersey vehicle owners what conduct on their part will render them liable to its license suspension penalty. Instead of prescribing **a** primary standard of conduct, it facially authorizes the enforcer unfettered discretion to prescribe **them.** The fundamental distinction is between two distinct scenarios:

1) a delegation of power to make a law, which involves a discretion as to which the law shall be
2) conferring an authority or discretion as to its **execution** to be exercised under and in pursuance of the law.

The first scenario cannot be done; the latter is unobjectionable. [1 *Lewis Sutherland on Stat. Cons.* (2d Ed) § 88] The first scenario is precisely what had occurred when the Respondent's administrative agency arbitrarily concocted an unconstitutional suspension notice based on the nonappearance by a person in a municipal court to answer a traffic summons. [APP. 28-9] This transgression repudiates this nation's germane jurisprudence system. It also will misguide other jurisdictions to use the same unconstitutional modus operandi, under the guise of statutory construction. **It is in the public interest to determine the Constitutionality of section N.J.S.A. 39:3-30(a).**

Void for vagueness

The words "reasonable grounds" are not

quantifiable. As defined 'reasonable' connotes breadth. There is no method of measuring this term taken together or separately. While the test is not required to be quantifiable the Respondent cannot be vested with authority in a manner which as here, leaves it with such latitude and unfettered discretion that she cannot be held accountable. The standard of review of **Constitutional** challenges to state action depends upon whether a fundamental right or suspect classification is involved. If so, the court must review the action under a "**strict scrutiny analysis** ".

The Petitioner claims the "reasonable grounds" part of N.J.S.A. 39:5-30(a) is unconstitutional on its face because it is unduly vague. A vague statute is **not** reasonably necessary to achieve the legislative intent of **removing unsafe drivers from the state's highways**. The Motor Vehicle Act is **replete** with sections containing **explicit** invariable standards of guilt or rules of action dealing with motor vehicle infractions.

A statute may be "void for vagueness" if a reasonable person must necessarily guess at its meaning because:

1) the applicable coverage of the statute is unclear.
2) It fails to specify what those within its reach are required to do in order to comply.
3) it permits public officials to exercise unreviewable discretion in their enforcement of it because of lack of standards .

See *Wolan v. Ferber,* 79 A.2d 86, 87, 12 N.J.Super. 167, 168-9 (A. D. 1951):

> "We are doubtful whether the clause which authorizes revocation of the license "on any other reasonable grounds" is valid or whether it is fatally defective in failing to warn the licensee what conduct on his part may bring about a forfeiture of his license. *U.S. v. L. Cohen Grocery Co., 255 U.S. 81, 41 S.Ct. 298, 65 L.Ed 516*

(1921); A.B. Small Co. v. Am. Sugar Refining Co., 267 U.S. 233, 45 S.Ct. 295, 69 L.Ed. 589 (1924)"

See also *Champlin Refining Co. v. Corporation Com'n*, 286 U.S. 210, 243 (1932):

> "It is not the penalty itself that is invalid, but the exaction of **obedience** to a rule or standard that is so vague and indefinite as to **be really no rule or standard at all.** " (Citations)

In *United States v. L. Cohen Grocery*, 255 U.S. 81, 89 (1921) this Court held:

> "the words "that it is hereby made unlawful for any person willfully...to make any unjust or un**reasonable** rate or charge in handling or dealing in or with any necessaries....forbids **no specific** or **definite** act...to attempt to **enforce** the action would be the exact equivalent of an effort to carry out a statute which in its terms merely penalized and punishes **all acts** detrimental to the public interest when unjust and un**reasonable** in the examination of the court and jury."

Suspension of a driving license is a penalty

The New Jersey Supreme Court held in *New Jersey Div. of Motor Veh. v. Egan*, 511 A.2d 133, 103 N.J. 350, 355-7 (1976) that the suspension of a driving license is a penalty. This is also supported by the preamble to the Motor Vehicle Act when enacted in 1921 [APP.29) It states in pertinent part:

> "An Act...defining proceedings for the violation of the provisions of the act and **penalties for said violation.**"

The section of the said 1921 Act relative to driving license suspensions is 135-55, therefore a suspension under this Act is a penalty and the Act itself is a penal statute.

See *State v. Rowe*, 181 A. 706, 708 116 N.J.L 48, 51 (Supr.Ct. 1935):

> "It is, however settled law that our Motor Vehicle Act is a penal statute; it is quasi criminal in nature."

The protection of the Fourteenth Amendment's "forewarning" requirement is applicable if a liberty or property interest is impacted b, the controlling statute and not whether it is labeled a penal statute

In *Giaccio v. Pennsylvania*, 382 U.S. 399, 402 (1966) this Court held:

> "In holding that the 1960 Act was not constitutionally vague the State Superior and Supreme Court rested largely on the declaration that the Act "is **not** a **penal** statute" but simply provides machinery for the collection of costs of a "civil character" analogous to imposing costs in civil cases "not as a **penalty** but rather as compensation to a litigant for expenses..."But admission of an analogy between the collection of civil costs and collection of costs here does not go far towards settling the constitutional question before us. Whatever **label** be given the 1860 Act, there is no doubt that it provides the State with a procedure for **depriving an acquitted defendant of his liberty and his property.** Both **liberty and property are specifically protected by the Fourteenth Amendment** against **any state deprivation** which **does not** meet the standards of due process, and this protection is **not** to be avoided by the simple **label** a State chooses to fasten upon its conduct or its statute. So here this state Act **whether labeled "penal" or not** must meet the challenge that it is **unconstitutionally vague**."

A motor vehicle owner's driving license is a liberty and property interest protected by the Fourteenth Amendment's due process clause

David v. Strelecki, 235 A.2d 195,199, 97 N.J.Super. 360, 368, (A.D. 1967):

> "A revocation or suspension of driving privileges is deemed to be civil in nature, but its result can be a **deprivation** of **liberty** and of **property** rights in a license to drive an automobile"

Wall v. King, 206 F.2d 878, 882 (1st Cir. 1953):

> "We have no doubt that the **freedom** to make use of **one's property,** here a motor vehicle, as a means of getting about from place to place, whether in pursuit of business or pleasure, is a '**liberty**' which under the Fourteenth Amendment cannot be denied or curtailed by a state without due process of law"

Miller v. Depuy, 397 F. Supp. 166, 172 (E.D. PA 1969):

> "The **right** to drive an automobile is integrally bound up in the **right to travel** guaranteed by the Supreme Court's interpretation of the United States Constitution. See *United States v. Guest*, 383 U.S. 745, 86 S.Ct. 1170, 16 L.Ed.2d 239 (1966)"

See also *Motor Veh. Mfr's Ass'n v. State Farm Mut*, 463 U.S. 29, 32 (1983) "the automobile gave Americans unprecedented freedom to travel," and *Kent v. Dulles*, 351 U.S. 116, 125 (1954) where in a declaratory relief case a passport was denied based on an arbitrary and void standard of conduct concocted by the Secretary of State contained in a regulation but **not explicitly** contained in the controlling statute, this Court held "The right to travel is a part of the "liberty" of which the citizen cannot be deprived without due process of law" and that the defect could not be cured by a regulation.

An administrative agency cannot superimpose upon a statute a Standard of guilt or rule of action that the legislature did not articulate

> Lanzetta v. New Jersey, 306 U.S. 451, 454 (1939) stated the concise legal point of this entire Petition:
> "It is the **statute**, not the **accusation** under it that prescribes the rule to govern and warns against transgression. (Citations).....a statute which either forbids or requires the **doing of an act** in terms so **vague** that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law"

General Motors Corp. v. Blevins, 144 F.Supp.381, 396 (D.Colo 1956) is precisely analogous to the instant matter.

General Motors filed a declaratory judgment complaint in a **trial court**. The state administrative defendants moved to dismiss the Complaint to avoid a decision concerning the constitutionality of a section in a Colorado statute, i.e. C.R.S. '53, 13-11-14. This section says in pertinent part at 144 F.Supp. 395:

> "It shall be unlawful and a violation of this article for the holder of any license issued under the terms and provisions hereof:
> (10) Being a manufacturer of motor vehicles, **** who:
> "(c) Has **unfairly**, without due regard to the equities of said dealer and without provocation, canceled the franchise of any motor vehicle dealer..."
> The word "unfairly" is void for vagueness " "in that it fails to provide an ascertainable standard of guilt and hence denies due process"
> The district court then cited among other

authorities, at 144 F.Supp. 396, *Cline v. Frink Dairy Co.*, 274 U.S. 445, 47 S.Ct. 681, 71 L.Ed. 1146 (1927)(market at a **reasonable** profit). "The Court held that a legislature must fix the standard more simply and more definitely before a person must conform or a jury can act. 274 U.S. 465, 47 S.Ct. 687 . ...Accordingly due process is denied."

This section thereby provided the enforcers unfettered discretion to suspend a manufacturer's license to do business in Colorado under a vague standard of guilt when an automobile manufacturer cancels or fails to renew a motor vehicle dealer's franchise.

The District Court held at 144 F.Supp. 396 the following in response to the defendants' contention that this defect may be **cured** by an **administrative regulation:**

> "A legislature may authorize an executive officer or body to make rules and regulations for the purpose of carrying out the objects of a statute and may make a violation of such rules a criminal offense. *United States v. Grimaud,* 1911, 220 U.S. 506, 31 S.Ct. 480, 56 L.Ed. 563. However there must be a "primary standard". Cf. *Panama Refining Co. v. Ryan,* 1935, 293 U.S. 388, 427, 55 S.Ct. 241, 79 L.Ed. 446. Here the primary standard is lacking. Cf. *Koshland v. Helvering,* 1936, 298 U.S. 441, 447, 56 S.Ct. 767, 80 L.Ed. 268. The power to prescribe rules and regulations is not the power to **make law** for that may not be delegated by the legislature. *Manhattan General Equipment Co. v. Commissioner of Internal Revenue,* 1936, 297 U.S. 129, 134, 56 S.Ct. 397, 80 L.Ed.528. **The defect in the 1955 law cannot be cured by <u>any act</u> of the administrator."**

This same law is illustrated in *Kent v. Dulles,*

supra and in *Motor Vehicle Div. v. Levine,* 461 A.2d 754, 190 N.J. Super. 2, 6 (App. Div. 1983) [App.21,¶ 7] where the court ruled that an **administrative agency judge** could not **engraft** a requirement upon a section of the Motor Vehicle Act not **articulated** by the **Legislature** which was used to suspend a driver's license.

Again in *New Jersey Div. of Motor Vehicles v. Egan,* supra at 511 A.2d 134, 103 N.J. 353 the Respondent's predecessor in office **would not grant** one who violated N.J.S.A. 39:4-50.4(a) an "occupational driving license" because said "drunk driving" section of the Motor Vehicle Act did **not explicitly** provide for it. Conversely the Respondent does not have the right to suspend a license if the law **does not explicitly** provide for its suspension for failure to appear in a municipal to answer a traffic summons.

Another analogous case is *Parks v. Libby-Owens-Ford Glass,* 95 N.E. 616, 620, 380 Ill. 130 (1935). It teaches that the **constitutionality** of a statute is **not** determined by an **administrative construction** even if it had been applied during a long period of time. It also does not necessarily make the statute valid and immune from attack.

In *Parks,* section 1 of a statute, that was designed to combat occupational diseases, gave notice to industries in general to provide "**reasonable** and necessary devices" to combat such a disease .

Illinois' highest court ruled at 95 N.E. 624 its administrative enforcer's **action** to cure the problem by notifying an industry, **after it first determines in their judgment that a violation has occurred,** is **void** because the General Assembly **had failed to establish a standard or rule of action**., to wit :

> "It [section 1]leaves open, therefore the widest conceivable inquiry, the scope of which no one can foresee and result of which no one can foreshadow or adequately guard against " .. "The

> general assembly has failed to establish a standard or rule of action. The section is therefore void."

The Illinois Supreme Court's authority for its opinion was *United States v. L. Cohen Grocery Co.*, S.Ct. 298, 300, 41 L.Ed 516, 14 A.L.R. 1045 which also applies to both civil and criminal legislation. (U.S. Supreme Court citations)

See also *Guidi v. City of Atlantic City*, 668 A.2d 1098, 286 N.J.Super. 243 (A.D. 1996). The City attempted to cure a problem by accusing Guidi of violating a City code : "Feeding of birds resulting in heavy accumulation of bird feces...interfering with the well-being of residents". This Code did not **explicitly** address bird feeding but only dealt with abstract non quantifiable terms. She then brought an action in the trial court against the City **challenging** the constitutionality of Section 2.1(a) and 2.1(b) of Ordinance 190-1. After the trial court ruled against the plaintiff the appellate court reversed the ruling and held the ordinance is vague and over broad. It is vague because it does not "give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly (citations)" The Court further held at 668 A.2d 1099 that:

> "This ordinance leaves the citizen at the **mercy** of its **enforcers**....Pigeons are a **common enough** problem for a municipality to address. Other **jurisdictions have enacted ordinances** prohibiting the keeping or breeding of pigeons (Examples) The feeding of pigeons and other birds in a seaside community is a **common enough problem** that this conduct, if undesirable should be **specifically** prohibited **by ordinance**"

Because of the foregoing it is readily apparent the 'on any other reasonable grounds" statute is void

for vagueness and violates the "fair warning" requirement of the due process clause in the Fourteenth Amendment irrespective of the warning contained in the accusatory suspension notice.

B. Provisions Of This Title And The Point System

The second part of N.J.S.A. 39:5-30 (a), i.e. "every license... may be suspended... for a violation of any of the **provisions of this Title**" is circumscribed by the Point System enacted in 1982 revising N.J.S.A.39:5-30.3 enacted in 1969. [APP.29-32]

The said enactment equates various sections in the Motor Vehicle Act with penalty points, to wit: **N.J.S.A. 39:4-144** was assigned **2** penalty points. This system **quantifies** the meaning of "unsafe drivers" whose removal for a period of time is the legislative mission of N.J.S.A. 39:5-30. This mission was elucidated in *Atkinson v. Parsekian* 179 A.2d 732, 738, 37 N.J. 143, 155 (**1962**) [APP. 24].

Today there are 63 sections in the Motor Vehicle Act. A list of assigned points relative to these sections is found in the New Jersey Administrative Code at N.J.A.C 13:19-10.1. After being **convicted** of any combination of the listed sections totaling 12 penalty points within a two year period a driver is eligible to receive a Scheduled Suspension Notice. [App.31,¶ 4(a)]. If there are lives lost as a result of the traffic infraction, the ensuing parts of N.J.S.A. 39:5-30 take precedence. [APP.34-5,¶¶b,c]

The Petitioner's driving record, first placed into evidence in the Appellate Division by the Respondent, showed that it was devoid of any penalty points when his license had been **indefinitely** suspended in 1996 by the Respondent's predecessor.

The said list of penalty points never included a statutory section denoting the Respondent's "failure to appear" concoction. Also the concoction is not found in any provision of the Motor Vehicle Act.

The Petitioner was not therefore **forewarned** that his **liberty** and **property** interest could be negated under the penalty point system.

CONCLUSION

This Court should review this case because the commands of the Constitution's "fair warning" requirement in the Due Process Clause of the Fourteenth Amendment is being trampled on by a New Jersey state administrative agency authorized to suspend driving licenses. This arbitrary undermining of a motor vehicle owner's property and liberty interest has and will impact thousands of motorists in New Jersey. If this transgression is not corrected it will denigrate the teachings of this Court and corrupt other jurisdictions, not only in regard to driving licenses, but to every facet of activities executed by state administrative agencies against its population.

For these reasons, it is respectively submitted that this petition for a writ of certiorari be granted.

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APPENDIX

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RUSSELL E. LERMAN, on behalf of all others similarly situated, Plaintiff v. DIANE LEGEIDE, Director, State of New Jersey, Division of Motor Vehicles Defendant	) Superior Court)of New Jersey)Mercer County)Law Division)Docket No.)) Civil Action)COMPLAINT)FOR)DECLARATORY)JUDGMENT)AND)INJUNCTIVE RELIEF

The plaintiff, Russell E. Lerman, a citizen of Morris County , New Jersey complains of the above-named defendant as follows:

The Parties

1. Plaintiff, at all times material hereto was, a citizen of Morris County, who being a car owner had his driver's license indefinitely suspended to this day by the then Director of Motor Vehicles on or about March 30, 1996.
2. Defendant is the present Director of the Division of Motor Vehicles a state administrative agency authorized to enforce N.J.S.A. 39:5-30. "Suspension or revocation of driver's license, registration

certificate or nonresident reciprocity privileges; plenary hearing; preliminary suspension without hearing." (Exhibit A, annexed hereto)

Facts Giving Rise To This Action

3. On or about January 30, 1996 a Randolph Township municipal clerk filled in the blanks of a boiler plate Automated Traffic System (ATS) order bearing the signature of the former director, C. Richard Kamin. The order, whose format had been revised in June, 1994, is available over a computer link with the DMV. It ordered the plaintiff to appear by March 29, 1996 in Randolph Township Municipal Court to satisfy a traffic summons under N.J.S.A. 39:4-144 (Exhibit B, annexed hereto)
4. The said order stemmed from a secret DMV Closeout Procedure, which had been revised on January 14, 1993 to incorporate the computer system procedure. (Exhibit C, annexed hereto)
5. If the computer driven Automated Traffic System shows that an arrest warrant had not been executed and the case is not disposed of, the driver's license to operate a motor vehicle in New Jersey is automatically suspended.
6. The question to be answered is whether Exhibit B, annexed hereto, is a valid exercise of the Director's power. "An administrative officer is a creature of legislation who must act only within the bounds of the authority delegated to him" *Elizabeth Fed. Sav. & Loan Ass'n v. Howell,* 24 N.J. 488 (1957). "Where there is reasonable doubt as to whether such power is vested in the administrative body the power is denied", *Swede v. City of Clifton,* 22 NJ 303, 312 (1956). The said January 30, 1996 order shows that it was purportedly issued under the authority of N.J.S.A. 39:5-30. A perusal of this penal statute shows that there is nothing in it that gives the DMV the right to act as an agent of a municipal court and

the power to enforce a facially defective arrest warrant that violates the warrant clause in the Fourth Amendment, and to order anybody into municipal court to satisfy a traffic summons.

7. N.J.S.A. 39:5-30 is a penal statute, *State v. Rowe*, 116 N.J.L. 48, 51 (Supr.Ct. 1935). Suspension of a driver's license impacts a **property** and **liberty** interest, *David v. Strelecki*, 97 N.J.Super. 360, 368 (App. Div. 1967), cert. den. 343 U.S. 935. Penal statutes must be strictly construed and its scope will not be extended beyond the plain and general meaning of its words...reference must be had to its context and effects so that such construction may be given to it as will prevent the act from run into absurdity. See *Board v. McCloskey*, 87 N.J.L. 470, 476, 478 (Supr.Ct. 1915). In construing another penal statute the Supreme Court said in *In re Passaic County Utils. Auth.*, 164 N.J. 270, 300 (2000.(:

> "In discharging our interpretive responsibility, we are admonished that "each part or section [of the statute] should be construed in connection with every other part or section so as to produce a harmonious whole" and that "it is not proper to confine interpretation to one section to be construed ." Norman J. Singer, Sutherland Statutory Construction § 46.05 at 103 (5th ed. 1992). That principle of statutory interpretation is embedded in our decisional law. See *State v. Sutton*, 132 NJ 471, 479 (1993); *Kimmelman v. Hienkels & McCoy, Inc., 108 NJ 123, 129 (1987); State v. A.N.J.*, 93 NJ 421, 424 (1985); *Brown v. Brown*, 86 NJ 565, 577 (1981)"

Bearing in mind that the statutory provisions are in derogation of the common law, and they closely affect the **liberty** and **property** interest of the individual, and are highly penal in character, a strict adherence must be given to them. The law

frowns upon any attempt to enlarge the scope of a penal statute or to **loosen** a strict adherence to the statutory procedure described. It must appear that the existence of the director's authority was within the strict letter of the law, since the law permits, in this class of cases, an intendment that it was. See *State v. Baker*, 3 N.J. Misc. 532, 535 (Supr.Ct. 1925). A state administrative agency cannot and a state court would not **superimpose** upon a penal statute a procedure, and a **standard of guilt** for failing to follow that procedure, which the **Legislature did not articulate**. See ***Motor Vehicle Div. v. Levine*, 190 N.J.Super. 2,5,6 (A.D. 1983)**

8. An authoritative interpretation of a state statute by the state's highest court "puts these words in the statute as definitely as if it had been amended by the legislature" *Winters v. New York*, 333 U.S. 507, 514, 68 S.Ct. 665, 669, 92 L.Ed 840 (1948). The New Jersey Supreme Court construed the 1962 version of N.J.S.A. 39:5-30 which is now part (a) in *Atkinson v. Parsekian*, 37 N.J. 143, 151 (1962) (See Exhibit D, annexed hereto). The Supreme Court held:

> "The statute provides for a standard administrative hearing...There is no suggestion in the section that a proceeding before a magistrate, or the Director sitting as a magistrate, is a condition precedent to action by the Director".

Again the Supreme Court in *Cresse v. Parsekian*, 4 N.J. 326, 329 (1964) held that the Director has no discretion but must hold a predeprivation administrative hearing, which is a condition precedent, before a driver's license could be suspended. (See also N.J.S.A. 52:14B-11) The manner in which this hearing is to be conducted is articulated in *Cresse v. Parsekian*, 81 N.J.Super. 536, 549 (App.Div) 1963) which the Supreme Court upheld and ordered it to be followed on remand. The

Atkinson and *Cresse* decisions are also illustrated in *Director, Division of Motor Vehicles v. Glock*, 94 N.J.A.R.2d (MVH) 17, 19 (1993) where the administrative law judge showed that a municipal court hearing was irrelevant to a license suspension proceeding because under Evid. R. 63 (20) [803(c)(22)] a conviction for a non indictable offense in municipal court does not invoke the doctrine of collateral estoppel, citing *Kohrherr v. Ferreira*, 215 N.J. Super. 123, 128 (A.D. 1987) also *Burd v. Vercruyssen*, 142 N.J.Super. 344, 353 (A.D. 1976), certif.den. 72 N.J. 459 (1976). A traffic infraction is a non indictable offense.

9. Neither the United States Supreme Court nor any other federal tribunal has any authority to place a construction on a state statute different from one rendered by a state's highest court, whether state rule is procedural or substantive. See *Johnson v. Frankel,* 520 U.S. 911, 916, 117 S.Ct. 1800, 138 L.Ed.2d 108 (1997). Also *In re Estate of Kolacy*, 332 N.J. Super. 593, 598 (C.D. 2000), "the interpretation of New Jersey statutes and the determination of what New Jersey law is are primarily the responsibility of New Jersey courts." State courts in construing state statutes are not bound by decisions of federal or other foreign jurisdictions. See *First Nat'l Bank., Lyndhurst v. Bianchi & Smith*, 106 N.J.Eq. 333, 335 (Chanc. 1930); *River Development Corp. v. Liberty Corp., 45 N.J. Super. 445, 465 (C.D. 1957).*

10. The procedures generated by the defendant's shown in Exhibit B and C could be construed to be an unperfected administrative rule . Then it fits within the definition contained in N.J.S.A. 52:14B-2(e) of the Administrative Procedure Act (APA), P.L. 1968, c. 410. Since the adoption of Exhibit B and C did not comply with the rule-making procedures of the APA, they are null and void and unenforceable under N.J.S.A. 52"14B-4(d) :no rule here after adopted is

valid unless adopted in substantial compliance with this act."

Nature Of This Action

11. This is a suit for declaratory judgment pursuant to N.J.S. 2A:16-53, that the promulgation of the DMV Closeout Procedure and the Scheduled Suspension notice depicted in Exhibits B and C are null and void, of no effect and unauthorized by law and for such further necessary or proper relief, including granting an injunction, to enjoin defendant from taking any action in reliance upon said procedures and from enforcing said orders to appear in municipal court, and any further orders thereunder, based on such declaratory judgment, N.J.S.A. 2A:16-60

12. In view of defendant's actual and continuing enforcement of procedures and orders promulgated thereunder and plaintiff's contention that the promulgation of the closeout procedures and the enforcement of the appearance order are null and void, of no affect and unauthorized by law, there is an actual controversy within the jurisdiction of this Court. A binding declaration by this Court as to the validity of the Closeout Procedure and appearance order promulgated thereunder will effectively adjudicate the rights of the parties.

Wrongs Complained Of

13. The DMV Closeout Procedure issued on January 14, 1993 and the Scheduled Suspension notice prepared on January 30, 1996 are void, of no effect and unauthorized by law for the following reasons:

(a) It is beyond the power of an administrative body to change a statute by administrative interpretation, and the mandate of the provision of a statute for **strict** construction of its provisions, provides **no authority** for administrative **creation** of a right or **liability**

under the guise of construction. An administrative officer may apply only the policy declared in the statutes with respect to the matter as to which the officer purports to act, and the officer may not set different standards or change the policy.

(b) Likewise administrative officers may not supply omissions in, or enlarge the scope of a statute, or extend, restrict, or disregard the requirements of a statute.

(c) When a statute has been construed by the highest court having jurisdiction to pass on it, such construction is as much a part of the statute as if plainly written into it originally. When the New Jersey Supreme construed N.J.S.A. 39:5-30 in *Atkinson v. Parsekian,* 37 N.J. 143, 155 (1962) by saying:

> "When the **Director** exercises his administrative authority under N.J.S.A. 39:5-30 he determines that **a law of the highway** has been **violated** and that the **highway** would be a **safer place** for the public if the violator were removed for some period of time".

it **foreclosed** the use of the procedures taken by the Director in said DMV Closeout Procedure and Scheduled Suspension notice.

(d) A state issued driver's license, is a significant private interest in today's society. Deprivation of the **use of a person's motor vehicle** impacts on the person's **property**-on the person's ability to earn a livelihood. See *Bell v. Bursen,* 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, 29 L.Ed.2d 90 (1971). It also impacts on the person's **liberty**-the person's ability to get from place to place-whether in pursuit of business or pleasure. Raper v. Lucey, 488 F.2d 748, 752 (1st Cir. 1973). Moreover the personal inconvenience and economic hardship

suffered by reason of an unlawful suspension of a driver's license is not easily undone through post-suspension review procedures.

(e) Furthermore the computer driven DMV Closeout Procedure is a secret internal operating procedure which bypasses any adjudicatory determination by the Director prior to issuing a suspension notice. It **does not** promote the **policy** enunciated in *Atkinson,* supra., about the removal of a violator of **a law of the highway** so that the **highway** would be a **safer place** for the public. This policy can only be implemented in a non-emergency situation by a pre deprivation administrative hearing.

(f) The said secret internal operating procedure constitutes an unperfected administrative rule. The APA had not been satisfied prior to its implementation. Therefore the said DMV procedures are not binding and are unenforceable. See *Metromedia, Inc. v. Director, Div. of Taxation,* 97 N.J. 313 (1984), *Board of Educ. V. Cooperman,* 209 N.J.Super. 174 (App.Div. 1986). See p. 10 in "Report to the governor, pursuant to Executive Order 97", October 1, 1993:

> "agencies.....must also attend to unpublished internal rules, procedures and guidelines which constitute the "hidden bureaucracy". These undisclosed regulations can affect the public even more than formal published rules."

WHEREFORE. Plaintiff demands:

1. That said DMV Closeout Procedure and Proposed Suspension notice and any other orders promulgated thereunder with respect to plaintiff and all others similarly situated be declared null and void, of no effect and unauthorized by law.

2. That the Court restrain defendant's ongoing conduct that is enforcing the said procedures and orders promulgated thereunder.
3. That the Court issue such other or further relief as it may deem necessary and proper.

DATED: December 18, 2002

Original Signed By
Russell E. Lerman

Russell E. Lerman
Attorney Pro se

(EXHIBIT ANNEXED TO COMPLAINT)

DMV CLOSEOUT PROCEDURE

State of New Jersey
Administrative Office of the Courts
Municipal Court Service Division
DMV Closeout Procedure
Revision Date: **01/14/93**

Non-Parking violations for defendants
Who live in New Jersey

1. For Moving Violations where defendants have a New Jersey License (see Rule 7:6-3(b)): defendants who fail to appear at the scheduled court date, or fail to satisfy a payable complaint by the court date, will be eligible for an ATS Failure to Appear Notice (FTA). The FTA notice will include a new Court Date or Pay By Date.
2. If the defendant does not respond to the FTA notice, the case will become eligible for a warrant. By Court Rule, a warrant must be issued. After issuance, if the warrant goes unexecuted, the system will Close-Out the complaint 31 days after the warrant issue

date. If the autopic information is correct, DMV will initiate the Suspension Procedure.

3. ATS provides the Division of Motor Vehicles with a weekly electronic transmittal of all Close-Outs every Thursday night. The Division sends a Pending Suspension Notice to the defendant and gives the defendant 45 days to satisfy the matter.
4. If the defendant decides to contest the complaint after it has been Closed, the court should enter plea of Not Guilty into the system, and schedule the complaint for court. If the scheduled court date is after the defendant's DMV Proposed Suspension Date, the defendant must inform the Division of the pending trial. DMV will then determine if they will stay the suspension.
5. If the defendant is found guilty, and pays the court imposed penalties, the ATS receipt must be presented to DMV as proof that the complaint was satisfied, and request license restoration.
6. If a judge finds a defendant not guilty or dismisses a case after the complaint is closed to DMV, the court should advise the defendant of the responsibility to inform DMV that the complaint has been satisfied. DMV may access ATS to confirm that the case is disposed.

(EXHIBIT ANNEXED TO COMPLAINT)

DMV SCHEDULED SUSPENSION NOTICE

State of New Jersey DATE PREPARED: 01/30/96
Division of Motor Vehicles
228 East State Street
Trenton, New Jersey 08606
Date Prepared: 01/30/96
Russell E. Lerman
P.O. Box 451
Dover, NJ 07802-0451
D.L. Number L2712 68065 05365

YOUR NEW JERSEY DRIVING PRIVILEGE(S) IS (ARE) SCHEDULED TO BE SUSPENDED ON 03/29/96 INDEFINITELY .
MOTOR VEHICLE SERVICES HAS SCHEDULED THE SUSPENSION OF YOUR NEW JERSERY DRIVING PRIVILEGE BECAUSE **YOU FAILED TO ANSWER SUMMONS(ES) IN THE FOLLOWING COURT**:

CT NAME: RANDOLPH TWP MUN COURT
STREET: 502 MILLBROOK AVENUE
CITY: RANDOLPH
ST: NJ
ZIP: 07869
DETAILS OF YOUR UNANSWERED SUMMON(ES) ARE SHOWN ON THE BACK OF THIS NOTICE.
CONTACT THE COURT CLERK OF THE ABOVE COURT TO SCHEDULE A DATE TO APPEAR IN COURT TO SATISFY THE SUMMON(ES).
TAKE THIS NOTICE WHEN YOU GO TO COURT. IF YOU ARE ORDERED TO PAY FINES, BE SURE TO OBTAIN RECEIPTS FOR YOUR PAYMENT.
THE RECEIPT(S) MUST INDICATE THE NAME OF THE COURT, THE SUMMONS NUMBER(S), THE COURT'S DOCKET NUNBER(S), THE DATE(S) OF THE VIOLATION(S), AND THE DATE THE SUMMONS(ES) WERE SATISFIED. IF THIS INFORMATION IS NOT SHOWN ON THE RECEIPT(S), MOTOR VEHICLE SERVICES CANNOT ACCEPT THE RECEIPT(S) AS PROOF THAT YOU PAID THE SUMMONS(ES).
RECEIPT THAT THE SUMMONS(ES) ARE SATISFIED MUST BE RECEIVED BEFORE THE SUSPENSION DATE OR YOUR NEW JERSEY DRIVING PRIVILEGE WILL BE SUSPENDED AND YOU WILL HAVE TO PAY A $50 RESTORATION FEE. **(AUTHORITY N.J.S.A. 39-5-30)**

/s/ *C. Richard Kamin*
C. Richard Kamin, Director

APPLICABLE STATE STATUTES

MOTOR VEHICLES-GENERAL ACT

An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulation the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and ***penalties*** *for said violations.*(L. 1921, c. 208, p. 643)

SUSPENSION AND REVOCATION OF REGISTRATION AND LICENSES

135-55. Revocation of registration and license-renewal. 6. Every registration certificate and **every license certificate** to drive motor vehicles may be **suspended** or revoked by the Commissioner of Motor Vehicles for a violation of any of the provisions of this act, **or** on other **reasonable** grounds, after due notice in writing of such proposed suspension or revocation and the ground thereof, and if a driver of motor vehicles shall have had his licenses suspended or revoked, a new license granted to him shall be void and of no effect unless it shall be granted by the Commissioner of Motor Vehicles in person; and if the registration or registration certificate shall have been suspended or revoked, a new registration made or a new registration certificate issued shall be void and of no effect unless the new registration shall be made and the certificate issued under the personal direction of the Commissioner of Motor Vehicles. (L. 1921, c. 208, p. 648)

FIRST ANNUAL SESSION-1982
DRIVERS LICENSE-POINT SYSTEM
CHAPTER 43
SENATE NO. 897

An Act to **establish** a motor vehicle **point system** for driver education and control, *amending R.S. 39:5-30,* supplementing chapter 5 of Title 39 of the Revised Statutes and repealing section 2 of P.L. 1969, c. 261 (C. 39:5-30.3)

Be it enacted by the Senate and General Assembly of the State of New Jersey:

*1. Any person who is **convicted** in this State of any of the following offenses, or in another jurisdiction of an offenses which if committed in this State would constitute any of the following offenses, shall be assessed points for each conviction in accordance with the following schedule:

Section Number	Offense	Points
	*	
	*	
	*	
R.S. 39:4-144	Failure to observe "stop" or "yield signs	2

*1. The Director of the Division of Motor Vehicles shall have the authority, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) to continue to adopt rules and regulations to determine the motor vehicle offenses for which **penalty** points may be assessed under this act, and the amount of points to be assessed for each offense.*

3. Whenever a licensee has accumulated six or more points, the director shall notify him at his last address of record with the Division of Motor Vehicles of the number of points he has been assessed and the general nature and effects of the point system.

4. Except for good cause, the director shall **suspend** for a period of no less than 30 days and no more than 180 day, except as provided in section 6 of this act, the license to operate a motor vehicle of any person who accumulates

a. **12** or more points in a period of **2 years** or less, or
b. 15 or more points in a period greater than 2 years, or
c. at least 12 points but fewer than 15 points in a period greater than 2 years unless the licensee notifies the division in writing within 10 days of the date of mailing of the proposed notice of suspension of his intention to attend a driver improvement course that is approved by the director, and satisfactorily completes such course.

The proposed notice of suspension shall be mailed to the licensee at his last address of record with the Division of Motor Vehicle and shall state the length of the suspension, the reason for the suspension and that the **licensee has a right to be heard on the suspension.**

The suspension shall become effective 15 days from the date of the mailing of the notice unless the director for cause establishes another date for commencement of the suspension, or, the licensee notifies the director in writing within 10 days of the mailing of the notice of his intention to personally appear at a hearing to challenge the suspension.

The **administrative law judge** presiding at a hearing held pursuant to this section shall only consider evidence of the actual number of points assessed and the period of time during which such points were accumulated, taking into consideration any point reduction credits earned by the licensee, in issuing a suspension. ....

*Note.-This law allows the director to determine the amount of penalty points to be assessed for each section of the Motor Vehicle Act that is enacted by the State Legislature providing the Administrative Procedure Act is followed prior to the assessment. The

state legislature **never enacted a section dealing with the "nonappearance of a motorist in a municipal court pursuant to a traffic summons"**, nor has the director assessed any penalty points through the Administrative Procedure Act for that standard of guilt. Therefore the Petitioner was not fairly warned that a nonappearance would result in the **indefinite** suspension of his driving license.

39:4-144:

No driver of a vehicle or street car shall enter upon or cross an intersecting street marked with a "stop" sign unless he has first brought his vehicle or street car to a complete stop at a point within 5 feet of the nearest crosswalk or stop line marked upon the pavement at the near side of the intersecting street and shall proceed only after yielding the right of way to all traffic on the intersecting street which is so close as to constitute an immediate hazard. No driver of a vehicle or street car shall enter upon or cross an intersecting street marked with a "yield right of way" sign without first slowing to a reasonable speed for existing conditions and visibility, stopping if necessary, and the driver shall yield the right of way to all traffic on the intersecting street which is so close as to constitute an immediate hazard; unless, in either case, he is otherwise directed to proceed by a traffic or police officer or traffic control signal, or as provided in section 39:4-145 of this title.
Amended by L.1956, c. 107, p.486, s. 5; L.1958, c.114, p. 588, s.4.

39:5-30:

a. Every registration certificate and <u>every license</u> certificate. Every privilege to drive motor vehicles, including commercial motor vehicles as defined in P.L. 1990, c. 103 (C.39:3-10.9 et seq.), every endorsement, class of license, and commercial driver license, <u>may be</u>

suspended or revoked, and any person may be prohibited from obtaining a driver's license or a registration certificate, or disqualified from obtaining any class of a driver's license or a registration certificate, or disqualified from obtaining any class of or endorsement on a commercial driver license, and the reciprocity privilege of any nonresident may be suspended or revoked by the director for a violation of any of the provisions of this Title **or** on any other **reasonable** grounds, after due notice in writing of such proposed suspension, revocation, disqualification or prohibition and the ground thereof.

He may also summon witnesses to appear before him at his office or at any other place he designates, to give testimony in a hearing which he holds looking toward a revocation of a license or registration certificate issued by or under his authority. The summons shall be served at least 5 days before the return date, either by registered mail or personal service. A person who fails to obey the summons shall be subject to a penalty not exceeding $100.00, to be recovered with costs in an action at law, prosecuted by the Attorney General, and in addition the vehicle registration or driver's license, or both, as the case may be, shall forthwith be revoked. The fee for witnesses required to attend before the director shall be $1.00 for each day's attendance and $0.03 for every mile of travel by the nearest generally traveled route in going to and from the place where the attendance of the witness is required. These fees shall be paid when the witness is excused from further attendance, and the disbursements made from payment of the fees shall be audited and paid in the manner provided for expenses of the department. The actual conduct of said hearing may be delegated by the director to such departmental employees as he may designate, in which case the said employees shall recommend to the director in writing whether the said

licenses or certificate shall or shall not suspended or revoked .

b. Whenever a matter is presented to the director involving an alleged violation of

(1) R.S. 39:4-98, where an excess of 20 miles per hour over the authorized speed limit is alleged, and which has resulted in the death of another;

(2) R.S. 39:4-50, and which has resulted in the death of another;

(3) R.S. 39:4-96, and which resulted in the death of another; or

(4) R.S. 39:4-129, wherein the death of another has occurred, and the director has not determined to immediately issue a preliminary suspension pursuant to subsection e. of this section, the director shall issue a notice of proposed final suspension or revocation of any license certificate or any non resident reciprocity privilege to operate any motor vehicle or motorized bicycle held by the individual charged or temporary order prohibiting the individual from obtaining any license to operate any motor vehicle or motorized bicycle in the state.

In the notice, the director shall provide the individual charged with an opportunity for a plenary hearing to contest the proposed final suspension, revocation or other final agency action. Unless the division receives, no later than the 10th day from the date the notice was mailed, a written request for hearing, the proposed final agency action shall take effect on the date specified in the notice.

Upon receipt of a timely request for a plenary hearing, a preliminary hearing shall be held by an administrative law judge within 15 days of the receipt of the request. The preliminary hearing shall be for the purpose of determining whether, pending a plenary hearing on the proposed final agency action, a preliminary suspension shall be immediately issued by

the judge. Adjournment of such hearing upon motion by the individual charged shall be given only for good cause shown.

c. Whenever any other matter is presented to the director involving an alleged violation of this title, wherein the death of another occurred and for which he determines immediate action is warranted, he may proceed in the manner prescribed in subsection b. above.

Amended by L. 1990, c. 103, s. 33, **eff. Nov. 9, 1990**.

C. 49:3-68. Private investigations.

21. (c) In case of contumacy by, or refusal to obey a subpoena or order issued to, any person, the **Superior Court, upon application by the bureau chief, may issue to the person an order requiring him to appear before the bureau chief**, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under **investigation** or in question. The court may grant injunctive relief restraining the issuance, sale or offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement or distribution from or within this State of any securities or investment advisory advice concerning securities by a person, or agent, employee, broker, partner, officer, director, investment advisor, investment advisor representative or issuer or stockholder thereof, until such person has fully complied with such subpoena or order and the bureau has completed its investigation. The court may proceed in the action in a summary manner or otherwise.

d) No person is excused from attending and testifying or from producing any document or record before the bureau or in obedience to the subpoena of the bureau chief or any officer designated by him, or in any proceeding instituted by the bureau, on the ground that the testimony or evidence (documentary or

otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; **but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence** (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury, false swearing or contempt committed in testifying. L.1967, C. 49, s.3-68

APPELLATE DIVISION OPINION
NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2742-03T5

RUSSELL E. LERMAN,
Plaintiff-Appellant
v.
DIANE LEGREIDE, DIRECTOR
STATE OF NEW JERSEY, IVISION OF
MOTOR VEHICLES,
Defendant-Respondent,

Submitted January 4, 2005 -Decided JAN 19 2005
Before Judges Lefelt and Falcone
On appeal from the Superior Court of
New Jersey, Law Division, Mercer County,
Docket No. L-3926-02
Appellant, Russell E. Lerman,
Submitted a pro se brief.
Peter C. Harvey, Attorney General,
Attorney for respondent; Patrick DeAlmeida, Assistant Attorney General,
of counsel; Wanda Y. Ortiz, Deputy Attorney General,

on the brief).

PER CURIAM

Petitioner Russell Lerman requests that we order the defendant, Director of the Division of Motor Vehicles, now the Motor Vehicle Commission, to "reinstate (his] driver's licenses of March 29, 1996" We reject Lerman's request and instead affirm Judge Sapp-Peterson's decision, dismissing his petition for lack of jurisdiction and failure to state a claim.

Lerman's license was suspended in the following manner. On October 29, 1995, Randolph Township issued him a summons for failing to stop before entering an intersection, in violation of N.J.S.A. 39:4-144. He failed to appear in the Randolph Municipal Court to answer the summons. As a result, the Division of Motor Vehicles notified Lerman on January 30, 1996 that it would suspend his driving privileges on March 29, 1996, unless Lerman supplied proof that he had satisfied the summons, Because Lerman failed to supply such proof, the Division suspended his driving privilege.

Instead of satisfying the Randolph summons, Lerman filed a complaint in the Law Division on December 23, 2002. He sought a declaration that the procedures utilized to suspend his driving privileges were null and void, and he also sought restoration of his driving privileges.

Unfortunately, significant procedural confusion was generated by several conflicting orders that were entered in Lerman's case. We nee not discuss the confusion at length, except to note that Judge Sapp-Peterson apologized for "the confusion generated by the various conflicting orders" and made clear in an explanatory order that "the record should reflect that

[Lerman's] complaint is dismissed [and] has been dismissed via amended order, since December 4, 2003"[1] Lerrman appealed from the dismissal of his case.

To resolve this appeal, we first note that Lerman sought to challenge in the Law Division the suspension of his driving privileges by the State agency, the Division of Motor Vehicles. Lerman's action was therefore, improperly brought in the Law Division and should have been filed directly with the Appellate Division. R. 2:2-3(a)(2); N.J.Const. Art VI, § 5, ¶ 4. Thus, Lerman's Law Division action was correctly dismissed for lack of jurisdiction.

Had the matter been dismissed only on this basis, it would have been transferred to the Appellate Division, R. 1:13-4(a), however, the matter was also properly dismissed for failure to state a cause of action. The procedures followed by Randolph Township to notify the Division of Motor Vehicles when Lerman failed to appear were consistent and in full compliance with our court rules. R. 7:8-9(b)(1). In addition, the Division of Motor Vehicles has ample authority to cooperate with municipal courts and suspend the driving privileges of a person, like Lerman, who fails to answer a municipal court summons.

N.J.S.A. 39:5-30 authorizes the Division to suspend or revoke the driving privileges of a person for a violation of any of the provisions of Title 39 "or on any other reasonable grounds", after due notice in writing of such proposed suspension,.....and the ground thereof."

While Lerman does not challenge the suspension notices he received from the Division, which were sent pursuant to the statute, he does argue erroneously that

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[1] *This amended explanatory order rendered moot Lerman's argument in his brief that the judge's February 9, 2004 order declared the procedure used to suspend his driver's licenses void and yet inexplicably failed to restore his driving privileges.*

N.J.S.A. 39:5-30 is penal and must be strictly construed. Contrary to Lerman's argument, however, we liberally construe legislative grants of authority to ensure that administrative agencies are fully able to perform their statutory missions. See Silverman v. Berkson, 41 N.J. 412, 417, cert. denied, 516 U.S. 975, 118 S.Ct. 476, 133 L.Ed. 2d 405 (1995).

The actions taken by the Division in cooperation with the Randolph Municipal Court are well within the Division's statutory authority. Accordingly, we decline Lerman's request to invoke our original jurisdiction to reinstate his driving privileges.

Affirmed.